

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
CIVIL ACTION No.

PREMIER CAPITAL, LLC,

Plaintiff,

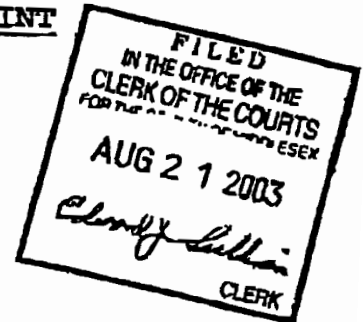
v.

BEVERLY JOHNSON PENZELL, d/b/a
Law Office of Kris E. Penzell;
and BEVERLY JOHNSON PENZELL, as
Personal Representative of the
Estate of Kris E. Penzell,

Defendants.

COMPLAINT

03-3486



1. The plaintiff, Premier Capital, LLC ("Premier"), is a Delaware limited liability corporation with a principal place of business at 226 Lowell Street, Wilmington, Middlesex County, Massachusetts 01887.

2. Beverly Johnson Penzell is a defendant in two separate capacities. Beverly Johnson Penzell is a defendant, individually, d/b/a Law Office of Kris E. Penzell. She is also a-defendant in her capacity as Personal Representative of the estate of Kris E. Penzell. (She is referred to herein, in both capacities, as "Beverly Johnson Penzell.") Her address is 316 West Rivo Alto Drive, Miami Beach, Florida 33139.

3. Premier is successor-in-interest to Bank of America (the "Bank") with respect to the Bank's right, title and

interest to a number of loan workout and collection matters then pending in courts of the State of Florida (the "collection matters").

4. Upon information and belief, prior to Premier's purchasing the collection matters and related assets from the Bank on October 3, 2001, the Bank entered into an agreement with the Law Offices of Kris E. Penzell (the "Penzell Law Firm"), under which such law firm represented the Bank in the collection matters. In connection with such agreement, the Bank transferred promissory notes and other commercial paper to the Penzell Law Firm.

5. Upon information and belief, Kris E. Penzell was the sole attorney in the Penzell Law Firm. Upon information and belief, Kris E. and Beverly Johnson Penzell were husband and wife.

6. Upon information and belief, in or about early 2000, Kris E. Penzell died. Beverly Johnson Penzell is Personal Representative of the estate of Kris E. Penzell in a probate matter now pending in the 11th Judicial Circuit of Florida, Miami-Dade County (No. 00-1320).

7. At all times relevant hereto, Beverly Johnson Penzell has been an employee of the Penzell Law Firm. Upon information and belief, she is not an attorney. Yet, she has held out the Penzell Law Firm as a going concern with the capacity to provide legal services, including litigation-related collection services. Upon information and belief, no attorney has practiced in the Penzell Law Firm since the death of Kris E. Penzell.

8. Subsequent to the death of Kris E. Penzell, Premier has attempted frequently to contact Beverly Johnson Penzell to protect its interests and move the collection matters forward. Premier's contacts have included numerous telephone and electronic mail messages. In addition, Beverly Johnson Penzell initiated contacts with Premier in Massachusetts.

9. As a result of such contacts, Premier determined that legal services have not performed in the collection matters since at least the death of Kris E. Penzell. Premier was able to so determine despite Beverly Johnson Penzell's having largely ignored Premier's request for information about the matters.

10. To avoid further damage to its interests, Premier made written demand of Beverly Johnson Penzell for return of the documents which together comprise the collection matters, including notes and other file materials, commercial paper and other documents. A true and accurate copy of Premier's written demand, and of the certified mail receipt bearing her signature, is attached hereto as Exhibit A.

11. Beverly Johnson Penzell has made no response to Premier's written demand.

12. Further, Beverly Johnson Penzell has failed and refused to communicate with Premier at all respecting the collection matters. She continues to retain all commercial paper and other documents comprising the collection matters.

Count I
(Conversion)

13. The allegations of paragraphs one through twelve are incorporated herein as if fully set forth.

14. Beverly Johnson Penzell converted to her own use, and/or for use in connection with the estate of Kris E. Penzell, Premier's case files and other litigation materials belonging to Premier.

15. Upon information and belief, Beverly Johnson Penzell seeks to convert to her own use, and/or for use in connection with the estate of Kris E. Penzell, as purported legal fees, moneys received from litigants in connection with such files and materials.

Count II

(M.G.L. c.93A, Sections 2 and 11)

16. The allegations of paragraphs one through fifteen are incorporated herein as if fully set forth.

17. At all times relevant hereto, Beverly Johnson Penzell engaged in trade or commerce within the Commonwealth.

18. The actions of Beverly Johnson Penzell, as set forth above, including, but not limited to, her refusal to return the collection matters, constitute unfair or deceptive acts or practices within the meaning of M.G.L. c.93A, Sections 2 and 11.

19. Such actions were performed willfully and knowingly.

20. As a result of the unfair or deceptive acts or practices described above, Premier sustained injury including, but not limited to, \$853,000.00, the fair value of the collection matters, and consequential damages including attorney's fees. .

Prayers For Relief

WHEREFORE, Premier requests that the Court enter judgment in its favor and against defendant Beverly Johnson Penzell d/b/a Law Office of Kris E. Penzell, and as Personal Representative of the estate of Kris E. Penzell:

(1) in the amount of Premier's actual damages, not less than \$853,000.00, plus interest;

(2) trebled, plus Premier's reasonable attorney's fees and costs, pursuant to M.G.L. c.93A, Sections 2 and 11;

(3) enter a permanent injunction ordering that Beverly Johnson Penzell, her agents, attorneys, and assigns, return to Premier all documents and litigation materials belonging to Premier, together with all monies received by her, in her individual capacity or as Personal Representative of the estate of Kris E. Penzell, in connection with the collection matters; and

(4) granting such further relief as the Court deems just.

PREMIER CAPITAL, LLC

By its attorneys,



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Dated: August 21, 2003